

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS DIAZ,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW  
YORK,

Respondent.

23-CV-3845 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Petitioner Carlos Diaz, who is currently incarcerated at Clinton Correctional Facility and is appearing *pro se*, brings this petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. He challenges his 2016 New York County conviction under Indictment Number 396/2013. The Court dismisses the petition without prejudice for the following reason.

Petitioner has previously submitted to this court an identical petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 challenging the same conviction. That petition was received via the electronic mailbox on May 5, 2023, and was opened under docket number 23-CV-3800. This petition was received by postal mail and was opened on the docket on May 8, 2023. Because this petition challenges the same conviction and raises the same grounds for relief, this duplicate petition is dismissed without prejudice to Plaintiff's pending case under docket number 23-CV-3800.

**CONCLUSION**

This petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 is dismissed without prejudice as duplicative of the Section 2254 petition under docket number 23-CV-3800. All further submissions should be made in the pending action under docket number 23-CV-3800.

Because the motion at this time makes no substantial showing of a denial of constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court shall enter judgment in this matter.

SO ORDERED.

Dated: May 8, 2023  
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN  
Chief United States District Judge